

RECORD IMPOUNDED

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-1942-22

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

LUIS BASTIDAS,

Defendant-Appellant.

Argued September 12, 2023 – Decided September 28, 2023

Before Judges Enright and Paganelli.

On appeal from an interlocutory order of the Superior Court of New Jersey, Law Division, Essex County, Indictment No. 21-03-0360.

Margaret McLane, Assistant Deputy Public Defender, argued the cause for appellant (Joseph E. Krakora, Public Defender, attorney; Margaret McLane, of counsel and on the brief).

Matthew E. Hanley, Special Deputy Attorney General/Acting Assistant Prosecutor, argued the cause for respondent (Theodore N. Stephens, II, Acting Essex County Prosecutor, attorney; Matthew E. Hanley, of counsel and on the brief).

PER CURIAM

Defendant appeals from the trial court's January 27, 2023 order vacating his guilty plea over his objection. We determine that the trial court erred, in exercising its discretion, and vacate the vacatur and remand for further proceedings. Our decision, in no respect, diminishes the trial court's ultimate authority regarding the ability to vacate a guilty plea.

Defendant argues on appeal:

POINT I

IT WAS AN ABUSE OF DISCRETION TO VACATE THE PLEA AGREEMENT.

A. DEFENDANT'S STATEMENTS DO NOT CONTRADICT HIS GUILTY PLEA AND DO NOT PROVIDE A BASIS TO VACATE THE PLEA AGREEMENT.

B. IT WAS AN ABUSE OF DISCRETION TO RELY ON A THIRD-PARTY'S RECITATION OF UNSWORN STATEMENTS OVER THE DEFENDANT'S OWN SWORN TESTIMONY.

C. IT WAS AN ABUSE OF DISCRETION TO VACATE THE PLEA AGREEMENT WITHOUT GRANTING AN ADJOURNMENT FOR DEFENSE COUNSEL TO INVESTIGATE ALTERNATIVE MEDICAL EXPLANATIONS FOR DEFENDANT'S STATEMENTS.

I.

On March 18, 2021, the grand jury returned indictments against defendant for: first-degree aggravated sexual assault, N.J.S.A. 2C:14-2(a)(1) (Count One); four counts of third-degree endangering the welfare of a child, N.J.S.A. 2C:24-2(a)(1) (Counts Two, Four, Six, Eight and Ten); and four counts of second-degree sexual assault, N.J.S.A. 2C:14-2b (Counts Three, Five, Seven and Nine).

On July 14, 2022, defendant appeared in court to enter a plea. Defendant was sworn and warned of the ramifications if he were to commit "perjury" or "false swear[]." Defendant admitted to where he lived at the time of the alleged offenses and that he touched a minor female's breast with his hand for sexual gratification. The State was "satisfied with the allocution and [indicated] there's no reason not to accept this plea."

After thorough questioning, the trial court stated:

I'm satisfied that you're guilty.

I'm satisfied that the defendant, Luis Bastidas, has, after advice of competent counsel with whom defendant is satisfied, entered a plea of guilty freely and voluntarily, and that defendant admitted the offense of endangering the welfare of a child, as covered in 2C:24-4(a)

[T]he defendant has been very alert and comprehending throughout this entire proceeding. Defendant is not under the influence of any medications, drugs or alcohol.

Defendant has waived his constitutionally guaranteed rights and signed the plea forms, which the [c]ourt incorporates into its findings. The defendant has neither been threatened to plead guilty nor promised anything other than what we discussed The defendant understands the maximum sentencing penalties that may be imposed and has acknowledged signing the plea form, and the [c]ourt adopts those forms by reference.

The trial court required defendant to "submit to a psychological examination by the Department of Corrections, the purpose of which [wa]s to determine if [defendant's] conduct in committing the offense was characterized by a pattern of repetitive and compulsive behavior," understanding the evaluation would occur at the Adult Diagnostic Treatment Center (ADTC). Further, defendant cooperated with the Probation Department to complete his Adult Presentence Report (APR).¹

On January 27, 2023, the parties returned to court for sentencing. A different judge heard the matter and immediately "advised the attorneys in this matter that [he was] not moving forward with the sentencing and the [c]ourt [was] rejecting the plea" The court explained that: (1) "in the ADTC

¹ The APR indicates that when defendant "was asked if he cared to provide a statement pertaining to the charge, he pled guilty to, . . . he requested to rely on the factual basis statement provided to th[e] court at the time of the plea agreement."

evaluation, the defendant denies responsibility for the present offense"; (2) defendant "had the effrontery to actually say that the victim, who alleged that she was assaulted between the ages of [six] and [eleven], made sexual advances to him"; (3) "[h]e also indicated that her mother, who also lived with him when she was young, made sexual advances toward him, as well"; (4) "he stated during his ADTC evaluation and interview that it was the child who came in and asked him to kiss her on her chest"; (5) defendant "directly controverts the admissions in his plea agreement . . . is not taking responsibility"; (6) defendant "said he learned in jail that police charge you with things you did not do"; (7) defendant "alleges the victim made up the allegations"; (8) defendant "denies committing any offense"; (9) defendant stated "I pled guilty because I thought if I pled not guilty, my whole family would have to be in court. It would be a lot for everybody to miss work"; and (10) "I don't have an attorney speak for me. I never got an attorney." The trial court observed that this last statement was "clearly inaccurate . . . he was represented."

The trial court concluded by stating that "[t]his court does not accept pleas of guilty from individuals who proclaim their innocence simply because they receive a favorable plea agreement or simply wish to be done with their court case." Further, the trial court indicated that it would "not sentence someone

who proclaims their innocence unless and until they are found guilty by a jury of their peers."

The State remained silent, but defense counsel requested an opportunity to be heard and to establish a record. Counsel argued that "the interests of justice do not call for the plea agreement to be vacated today." Counsel acknowledged that "what happened at the plea colloquy was admittedly contraindicated in his ADTC evaluation . . . [but] that [did] not call for vacating the plea agreement at this point." Counsel noted that: (1) the parties "were [only] notified about [twenty] minutes ago that Your Honor intended to vacate this plea agreement because of what was stated in the ADTC evaluation"; (2) "the interests of justice . . . call . . . for [an opportunity for both sides, particularly defense counsel, to engage in further investigation"; (3) the prior trial court "was thorough in his plea colloquy";² (4) "[a]t the time of the plea agreement, [defendant] was lucid . . . thinking clearly"; (5) "further investigation about whether the ADTC

² The trial court seemingly questions the thoroughness of the plea colloquy noting that "Question 17 on the plea form and all its sub-parts were left unanswered. And there wasn't a single question about immigration consequences." However, we note that the defendant advised the trial court during his plea hearing that he was a U.S. citizen and, therefore, other than indicating that status on the form, which was not done, the remainder of Question 17 would have been left blank with defendant directed to proceed to Question 18.

evaluation . . . done off record and without anybody . . . present who is now here in court . . . was an accurate reflection of [defendant's] lucidity, competence, understanding of the charges against him; or, rather, whether the on-record plea agreement was an accurate reflection of his competence and understanding of the plea agreement"; (6) defendant "says in the ADTC evaluation that he was feeling, quote 'very disoriented' at the time of the ADTC evaluation. [Defendant] is [seventy-seven] years old. There are a number of age-related medical conditions that could explain temporary confusion about the facts of the case or about the circumstances"; and (7) "most alarming . . . the counter-factual statement that he did not have an attorney assigned to him."

The trial court denied the request, without explanation, to refrain from vacating the plea that day. Further, the trial court denied defense counsel's request for a stay of the order. On March 6, 2023, we granted defendant's motion for leave to appeal.

II.

"Plea bargaining has become firmly institutionalized in this State as a legitimate, respectable and pragmatic tool in the efficient and fair administration of criminal justice." State v. Means, 191 N.J. 610, 618 (2007) (quoting State v. Taylor, 80 N.J. 353, 360-61 (1979) (citations omitted) (alteration in original)).

"There is, of course, no absolute right to have a guilty plea accepted."
Santobello v. New York, 404 U.S. 257, 262 (1971); see also State v. Salentre,
275 N.J. Super, 410, 419 (App. Div. 1994).

R. 3:9-2 provides that, "[t]he Court, in its discretion, may refuse to accept a plea of guilty" Even where the court has given a preliminary indication of willingness to accept a plea agreement under R. 3:9-3 it is clear that:

If at the time of sentencing the court determines that the interests of justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel or by imposing sentence in accordance with the court's previous indications of sentence, the court may vacate the plea or the defendant shall be permitted to withdraw the plea.

[State v. Daniels, 276 N.J. Super. 483, 487 (App. Div. 1994) (quoting R. 3:9-2, R. 3:9-3(e)).]

"In appellate review of judicial rejection of proffered plea agreements, the appropriate standard to be applied must be that of erroneous exercise of judicial discretion." Daniels, 276 N.J. Super. at 487.

III.

Defendant argues that: (1) his "statements in the ADTC evaluation could not provide sufficient justification to vacate the plea agreement because they did not contradict [his] prior sworn admission of guilt nor amount to an assertion of

innocence as to the endangering charge to which [he] pleaded guilty"; (2) "the court improperly relied on the ADTC evaluator's less-reliable recitation of [his] unsworn statements rather than [his] prior sworn plea colloquy or a colloquy with [defendant,] who was present in court for sentencing"; and (3) "it was improper to immediately vacate the plea agreement rather than grant the defense[']s request for an adjournment to investigate whether [defendant's] potentially concerning statements during the ADTC evaluation were the product of a medical or mental health condition rather than a change of heart." In support of this last argument, defendant relies on Means, for the proposition "that trial courts should not vacate plea agreements when other, less-extreme remedies are available."

In response, the State does not address why defendant could not have been sworn to address the ADTC evaluation, why a brief adjournment would have been inappropriate, or why the plea needed to be vacated that day. Instead, the State argues that the trial court's decision was correct because: (1) the trial court "acted within his discretion in properly rejecting the plea agreement before sentencing"; (2) "defendant does not believe that he was guilty and merely pleaded guilty to be released from prison"; (3) "defendant would have likely

moved to withdraw his plea based on the ADTC report";³ (4) defendant made a "colorable claim of innocence";⁴ (5) defendant's "explanation to the ADTC contradicts his plea [al]locution"; (6) although defendant's statements were not sworn, they were given through an "interpreter who works for a health care company," and should be deemed credible; (7) "a sentencing court should not be put in a position where they are judging the credibility of a defendant's plea colloquy, in which he admitted his guilt, and a later statement declaring his innocence"; and (8) and defendant's reliance on Means, for the proposition "that trial courts should not vacate plea agreements when other less-extreme remedies are available" is misplaced because, in Means, unlike here, there was no question of defendant's guilt and our Court "preserved the right of the trial court to exercise discretion to reject the plea."

We decline to embark on a factual analysis of defendant's statements, or the recitation of those statements by others, or whether those statements are reliable or contradict the actual sworn plea colloquy. It is for the trial court to consider all relevant circumstances in determining whether "the interests of

³ At oral argument defendant reiterated his position that he wants the plea agreement.

⁴ One of the requisite factors for him to withdraw his guilty plea. See State v. Slater, 198 N.J. 145, 157-58 (2009).

justice would not be served by effectuating the agreement reached by the prosecutor and defense counsel" R. 3:9-3(e). Further, we recognize that "[a] fuller picture of the offender does not emerge until sentencing, when the judge has had the benefit of a defendant's presentence report." State v. Brockington, 140 N.J. Super. 422, 427-28 (App. Div. 1976). The trial court's discretion is wide when performing this function. Id. at 427.

Nonetheless, we are concerned with the sentencing judge's failure to either have defendant sworn at the sentencing hearing, to allow for an on-the-record assessment of the circumstances surrounding the ADTC evaluation, or to allow for a brief adjournment for defense counsel and defendant to confer and consult with others, if necessary, to address the concerns raised by the judge.

In the unique circumstances presented here, including: (1) the sworn proceeding and findings of the first trial court; (2) there being no apparent need for an immediate vacatur of the plea; (3) the parties only being provided with twenty minutes notice that the trial court was vacating the plea; (4) defendant's revelation, during the ADTC evaluation, that he takes medication to reduce his anxiety and his "current mood [w]as 'very disoriented'"; (5) the ADTC evaluator's recognition that "[e]valuations conducted through an interpreter are problematic in that certain aspects of functioning cannot be assessed and

inferences are difficult to make from the material elicited"; (6) defendant's indication that he did not have an attorney, despite being represented by counsel; (7) defendant's contradictory statements, in the ADTC, wherein he apparently indicated both that "I said to my attorney and everyone else" and "I don't have an attorney to speak for me"; and (8) the APR where defendant "requested to rely on the factual basis statement provided to th[e] court at the time of the plea agreement"; we find that the sentencing judge erred in his exercise of discretion. Daniels, 276 N.J. Super. at 487.

Therefore, we vacate the vacatur and remand the matter for further proceedings consistent with this opinion. Thereafter, the trial court can exercise its authority to determine whether the interests of justice will be served by effectuating the plea agreement. R. 3:9-3. We reiterate that, in no respect, does this opinion diminish the trial court's ultimate authority to accept or reject defendant's plea.

Vacated and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.


CLERK OF THE APPELLATE DIVISION